

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

DOCKET NO. 98-520

MARCH 2, 1999

WALDOBORO WATER COMPANY
Proposed Increase in Rates

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. Summary of Decision

We approve a rate increase for the Waldoboro Water Company (Waldoboro or the Company) to produce annual operating revenues of \$201,403. This is an increase of \$33,387 or 19.9% over 1997 actual revenues of \$168,964. We request Consumers Maine Water Company (as receiver of the Company) to provide additional information about its request to create a deferred debit on the Company's books.

II. Background

On July 7, 1998, the Company, through its Court-appointed receiver, Consumers Maine Water Company (Consumers), filed changes to Waldoboro's rate schedules proposing to increase its operating revenues by \$35,191 or 20.95% over 1997 actual revenues of \$168,016. The Company filed this proposed rate increase with the Commission pursuant to 35-A M.R.S.A. § 307. The Commission set an intervention deadline of August 5, 1998. On July 31, 1998, the Commission received a petition to intervene from the Town of Waldoboro (Town).

Because the Commission did not have sufficient time to investigate this matter before the proposed August 7, 1998 effective date, the Commission suspended the operation of the proposed rate schedules, pursuant to 35-A M.R.S.A. § 301, for a total of eight months, from and including August 7, 1998, by Orders dated August 5, 1998 and November 6, 1998.

On November 5, 1998, the Town filed a letter, indicating that the Town had no objection to the proposed increase if Consumers continues in its role as receiver. That letter also stated:

We take no position on the recording by Consumers, as receiver, of cash shortfalls as a deferred debit and amortized through rates, but believe that that may implicate principles of retroactive ratemaking, which at this time we leave to the Commission to resolve. We do object to this treatment in the event that and for any period after Consumers ceases to be receiver and during which Mr. Ring or any company in which he has an ownership interest, has ownership or control of the Company. Thus, if permitted, any deferral and amortization would only apply during the period that Consumers is acting in a receivership capacity.

On February 19, 1999, the Hearing Examiner issued a Hearing Examiner's Report containing a draft decision. Consumers filed exceptions to the Report on February 25, 1999. It did not contest any of the Examiner's recommendations related to the rate increase. It did except to the Examiner's recommendation that the Commission not permit the deferred debit.

III. Rate Increase Request

A. Adjustments to O & M

We have accepted the Company's proposed adjustments to operation and maintenance expenses except for the proposed rate case expense adjustment discussed in section III.B below. The notable adjustments to operation and maintenance expenses (O&M), shown on the attached Exhibit 2, are the \$17,482 reduction to employee pensions and benefits and the added \$25,032 cost of purchased water from a new source of supply. The employee pensions and benefits are reduced because Consumers, as receiver, has stopped or will stop paying for the health and life insurance benefits of the President and Treasurer of the Company.¹ The above adjustments, combined with adjustments to chemical expenses, contractual services, rental of equipment, and miscellaneous expenses, result in a total reduction in O&M of \$6,696.

B. Rate Case Expense and Normalization

The Company's requested revenue requirement included a 2-1/2 year normalization of the estimated rate case costs. The estimated cost (\$10,150) assumed that the case would be adjudicatory and that a technical conference and other meetings

¹ We understand, that Mr. Ring, the owner of Waldoboro, has asked the Superior Court to review this decision and the Court has set a hearing date of March 2, 1999.

would be necessary. Based upon those assumptions, the Company requested a rate case normalization of \$4,064 or 2% of annual revenue. In a letter to the Commission dated January 7, 1999, the Company reported that it has expended approximately \$3,500 in preparing this case and proposes that the annual rate case normalization continue at its current level of \$2,260. This adjustment reduces the revenue requirement by \$1,804. If we apply a 2-1/2 year normalization to the \$3,500 actual costs incurred, the annual normalization would be \$1,400 or a reduction of \$2,664 in revenue requirement. We find the Company's proposal to continue normalization of rate case expenses at the current level to be reasonable in light of the Company's financial condition and the probable need for more frequent rate filings in the future.

C. Summary of Revenue Requirement Adjustments

Our allowed adjustments to the Company's operating statement are shown on Exhibit 1. Consumers filed no exceptions to any of these adjustments. We accept the Company's adjustments to depreciation expenses and property taxes to reflect additions and retirements, the Commission/Office of Public Advocate/Drinking Water Commission assessments to reflect the increased revenue, and income taxes based upon the allowed return. This, along with the changes to O & M described above, results in pro forma operating revenues of \$201,403 or an increase of \$33,387 (19.9%) over 1997 actual revenues.

D. Treatment of Unpaid Consumers Maine Water Company Charges

On September 18, 1996, the Superior Court (Court) issued an interim order appointing Consumers "as receiver to manage the business and affairs of the Waldoboro Water Company...pending final resolution on the merits at trial."² That order set forth the obligations and authority of Consumers as receiver.

In June 1997, the Court issued an order appointing R. Stephen Thing as trustee charged with selling the Company. Mr. Thing, on December 31, 1997, signed a purchase and sale agreement for the purchase of the assets by the Town of Waldoboro for \$387,200. The Court subsequently granted the Department of Human Services's motion for summary judgment seeking to enforce the terms of the settlement agreement and, on March 16, 1998, issued an order approving the sale. Concurrently, the Court issued an Order Terminating Interim Receivership. The order provides that upon the transfer of the assets of the Company by

² See Commissioner of Human Services v Waldoboro Water Co., 1999 ME 36, __A.2d__ (Me. 1999) for a description of the events leading up to the Department of Human Services's request for the appointment of a receiver.

the Trustee to the Town of Waldoboro, the receivership created by the Interim Order dated September 18, 1996, shall terminate and Consumers shall be discharged as receiver. The order further provides that:

"[a]ny Receiver's compensation or expenses incurred pursuant to paragraph 3 of the September 18, 1996 Interim Order which have not been reimbursed to the Receiver out of the operations of the Waldoboro Water Company shall be paid to the Receiver at the closing on the sale of the assets to the Town.

In April 1998, Paul Ring, president and owner of the Company, appealed the Superior Court's order approving the sale to the Maine Supreme Judicial Court. The Law Court, on February 19, 1999, affirmed the Superior Court's judgment that the settlement agreement constituted a binding contract. To date, there has been no closing and the receivership has not terminated.

Judy W. Hayes, Consumers's President, stated in her prefiled testimony that "[t]here is significant costs being incurred for the potential sale of this company, or its assets." This includes the Trustee's fee of a 5% commission, plus expenses. Those expenses were \$30,000 by July 1998 and could go as high as \$50,000. In addition, there are legal costs for the receiver in representing the Waldoboro Water Company in various hearings and appeals. Ms. Hayes further testified the existing cash flow of the company is such that over \$65,000 of Consumers Maine's monthly bills were unpaid and outstanding as of July 1998. Ms. Hayes expressed a concern that there may not be enough cash at any sale closing to support the payment of all these bills once the outstanding mortgage to Camden National has been paid. Therefore, Consumers asked the Commission to allow any shortfall in cash flow to be supported by the Waldoboro customers in the next rate filing after the sale. She requested any "cash shortfall upon the Company's sale be recorded as a deferred debit and amortized through rates over an appropriate length of time to generate the cash to pay these bills."

We are unable to approve Consumers's request to defer these operating expenses without further information on what expenses are being deferred and the likelihood of their recovery. As soon as possible, Consumers should provide the Commission with an itemized accounting of the amounts it seeks to defer. This should clearly distinguish between expenses associated with the receivership and normal operating expenses. Consumers should also describe its expectation of how these costs will be

recovered assuming the Town purchases the Company. This should include a description of what costs, if any, will have priority over Consumers's expenses.

After we receive this information, we will determine whether an accounting order allowing some, or all of the costs to be deferred is appropriate, given the types of costs being deferred and the likelihood of their recovery.

Accordingly, We

O R D E R

1. That Waldoboro Water Company's schedule of rates filed July 7, 1998, will not go into effect as requested.
2. That Waldoboro Water Company's schedule of rates, Pages 1-4 (Third Revision) filed on March 1, 1999, will go into effect as of March 1, 1999.
3. That Consumers Maine Water Company shall provide the additional information described above in the body of this Order.

Dated at Augusta, Maine this 2nd Day of March 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond